App. F. IX-4

Ch

1940. (~~Feb~~)

File No. 75-40

Serial Nos. 1-17

Previous References.
Ch 9-35 (1-10)
" 8-27 (1-3)

Later References.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Seventeen

Part B for Feb '42

SUBJECT.

Remand of accused persons to police Custody.

Order No P 3591-94 Dt 5.2.1942

To

Registrar H.C.
D.G. of police
D.M's of Districts

Accord sanction to make a rule of practice under Sec 554 of the Code of Criminal procedure in respect of the above matter

C.G. Vajravelu
25.6.42

Serial No.

From
The Govt Advocate in Mysore
D.O. No 203 Dt. 20.9.1940

Suggests that the orders relating to the remand of accused persons to police custody may be so modified as to restrict the power of remand only to Stipendiary Magistrates of the I & II class.

Submitted with previous references.

1) According to the existing orders, orders remanding an accused person to police custody shall be passed only by I & II Class Magistrates Specially empowered (Vide clause (e) to para 2 of the G.M. Dt 27.12.1935)

3) The Amildars and Deputy Amildars who are second class Magistrates Ex-Officio under the separation Scheme have also been empowered to authorise the detention of accused persons in the custody of the police.

F E

Flag F

NOTE—Contn. Sheet.

Serial No.

4) The Govt Advocate has now brought to the notice of Govt that unnecessary remands are being frequently granted by the Magistrates and the remands are Contrary to the Govt orders on the subject. He has suggested that the existing orders may be so modified as to restrict the power of remand only to Stipendiary Magistrates of the First and Second Classes.

5) Kind reference is invited to the un official Note of 15.8.1927 and 1st September 1927 of the High Court stating that the High Court had no objection to the Aumildars and Deputy Aumildars (Ex. Officio II Class Magistrates) being invested with powers to authorise detention of the accused in police Custody under Sec 167 Cr.P.C.

Reg M (Cts 8-25-1-3)

Reg L (Cts 8-2)-1-1)

Remand of accused persons to police custody. 3

1978

General and Revenue Secretariat | C/S File No. 75 of 1940. | [App. F. III-2

Serial No.

Flag F

Agreeing with the View of the High Court orders were issued during 1927 empowering the Ex Officio II class Magistrates (Amildars & Dy Amildars) to authorise detention of accused persons in police custody.

2) As the present proposal of the Govt Advocate is to modify the above order, it is a point for orders as to whether the High Court may be consulted in the matter.

3) A draft of a letter is also put up.

(Chs 28/10)

4) The High Court may be consulted in the matter as to form in future. The draft may be approved

(Sir Secretary) 3 29/10

5) Hon 2 29/10/40

10) Hon by 29/10

2 To The Registrar High Court 29/10

2222 of 5.11.40.

Calls for the views of the H.C. on the suggestion of the G.A.

The reference C/S was put up on the D. of 1972 [illegible]

3002 29/10

TYPING SECTION 29 OCT. 1940 GEN. & REV. SECTT.

NOTE—Contn. Sheet.

Hon A

Serial No.

From
The Registrar, High Court
Roc No 603 /41-41 Dt 12.12.1941.

Recommends in the circumstances explained that the power to remand persons to police custody may be withdrawn from all Second Class Magistrates.

11) Under the existing Orders, all the Special Second Class Magistrates and All Amildars and Deputy Amildars who are Ex-Officio Second Class Magistrates are empowered to authorise the detention of accused ... in custody of the police. Kind reference is invited to the Govt Note Dt 10.9.1927 and O.M. Dt 27.12.1935 on the subject.

12) The High Court has recommend that in future applications for remanding the accused persons to police custody should be made only to a First Class Magistrate and that as a consequence of this, the power to remand such persons may be withdrawn from all Second Class Magistrates.

Remand of arrested persons 3638 5

General and Revenue Secretariat — Cl File No. 75 of 1940. [App. F. III-2

Serial No.	
4	(13) The following points are for orders:-

(1) Whether the I.G. of Police may be consulted in the matter with a view to ascertain as to whether the proposed order requiring that applications for remand should be made only to First Class Magistrates will cause inconvenience both to the investigating Officer and to the accused who will have to be taken all the way to the Stations where I Class Magistrates are stationed.

(2) Whether the power invested in the Amildars and Deputy Amildars to order the remand may be withdrawn, the Special Second Class Magistrate however Continuing to authorise the detention of accused persons in police custody as recommended by the Govt. Advocate please see O.M. dt 27.12.35 on the (X) subject.

(X). E

(14) The High Court however state that in only rare Cases that it is necessary to remand accused persons to police Custody and in such Cases applications may be made to I Class Magistrates who are nowhere far away.

Submit for Orders with references

CP 20/IV

(15) It is not proper for the accused to remain in Police Custody for a

NOTE—Contn. Sheet.

Remand of accused persons.

Cts File No. 75 of 1940: General and Revenue Secretariat

Serial No.

period longer than 24 hours. If the Police authorities get remand daily, then they are prone to be slack in their investigation, & delay in this respect, impedes the dispensation of proper justice in a case. It is a healthy idea that the Police authorities should approach a 1st Class Magistrate daily, in case a further remand to Police custody is required. If this principle is accepted, then prompt investigation of cases will be made & accused persons will not unnecessarily be detained in Police custody. The suggestion of the High Court may be adopted, ~~with such modifications~~ if necessary, after consulting the D.I.G. Police on his return

Law Secretary 3 27/2/41

6:3:41 3:3

(16) The D.I.G. of Police may be consulted.

Hm 2 5/3/41.

3 5/3/41

17) Submit for a Civil

CPM 6/3 Dsw

(18) Submitted for kind perusal before Dasra.

I Member) 3 6/3/41.

MAR 6 1941 7846

(19) Mem 7/3/41

(20) Dsw 3 7/3/41

TYPING SECTION 7 MAR 1941 GEN. & REV. SECTT.

General and Revenue Secretariat — File No. 75 of 194D. — [App. F. III-2

Serial No.	
5	To the I.G. of Police No P 4580 of 8.3.41 Do copy of Sec 4 seeks for opinion re withdrawal of powers of remand from II Class Magts.
6	From The I.G. of Police C No 130/40-41 of 3.4.1941 Furnishes his opinion in regard to the Withdrawal of power to remand accused persons to police custody from all Second Class Magistrates in the State.
(21)	The I.G. of Police is of opinion that it is desirable that steps should be taken to ensure that remands to police custody are granted only for adequate reason and that II Class Magistrates are probably not capable of exercising due discretion in the matter
(22)	He is however of opinion that in some places like the Malnad talukas it may be found desirable to permit the Second Class Magis to exercise the power to grant remand to police custody, such posts being however held by experienced officers. It has been suggested that the Dist Magistrates may be consulted.
(23)	It is for orders as to whether the

See A 102

NOTE—Contn. Sheet.

Remand of arrested persons to police custody.

3538 5-25

Ch File No. 75 of 1940. General and Revenue Secretariat

Serial No.

Dist. Magistrates may be addressed in the matter as suggested by the I.G. of police.

(24) (From the High Court letter dt. 12-12-40 it is not clear whether the ~~Opinions of~~ the Dist. Magistrates were consulted ~~in the matter~~ by them before addressing Govt in the matter

CPO 7/4 Hm

~~X~~ We agree with the best Magistrates on the matter may be ascertained by Secretary). 3 7/4/41

6/4/41 7/4

26) The suggestion of the High Court may lead to inconvenience in a number of places. The Dist. Magistrates may be consulted.

I Member) Hm 2 7/4/41.

3 8/4/41

27) Sec 9/4/41

Hm 2 9/4/41

3 9/4/41

28) Submit with a draft

CPO 10/4 Hm

29) Hm 3 10/4/41

Issued No P 5213-21 dt 16.4.41

fms A

Remand of accused persons to police custody

General and Revenue Secretariat | Cts File No. 75 of 1940. | [App. E, III-2

V 6134

Serial No.

7

From

The Dist. Magistrate Kolar

No J.C 1160/40-41 Dt 18-4-41

States that it is better that all second class Magistrates have the power to remand the accused to police custody and Sessions Courts is exercised over remand orders.

30) The opinion of the other Dist. Magistrates may be awaited

CSR 25/4

31) Es 3 25/4/41

Sus A

Letter No J.C 136/40-41 Dt 24-4-1941 from the DM. Tumkur offering his opinion in the matter

Letter No J.C Dis 3598/40-41 Dt 28-4-1941 from the DM. Mandya furnishing his opinion in the matter

32) The opinions of the other Dist Magistrates are awaited Ltd for perusal

33) Place this after the opinions received from all the Dist. Magistrates & the Sessions Judges who have sent in their opinions

3 1/5/41

CSR 1/5

3 1/5/41

Sus A

NOTE—Contn. Sheet.

File No. of 194 General and Revenue Secretariat

Serial No.

From
The Dist. Magistrate Mysore
No G1 672 /40-41 Dt 8.5.41.

States that the existing procedure may continue

From
The Dist. Chitaldrug
No J5 L.C. 2862 /40-41 Dt 26.5.41.

States that the present conditions prevailing in Mysore do not call for any change at present.

From

The Dist. Magistrate Hassan Dist.
No Lds J, 671 Dt 11.6.41

States that the present procedure should not be withdrawn.

Reports from the DMs of Bangalore, Shimoga and Kadur Districts have not yet been received.

Submitted with a draft of a reminder

3
1/7/

Issued No P 52-54 Dt 3.7.41

Cancl 1/7

Power to remand [illegible] 1800/41 11

General and Revenue Secretariat — File No. 75 of 1940. [App. F. III-2

Serial No:

From
The Dist. Magistrate Bangalore
No J.1-2102 dt 8.7.1941.

States that the existing system may continue

2) No report has so far been received from the D. Ms of Kadur, Shimoga, Dhs. Copies of Govt orders on the subject were furnished to Kadur on 9.7.1941.

3) If approved, a reminder may issue to Kadur.

2) The drafts are also put up

Cir 1/8 mm

4) Yes 3 4/8

To the Dt. magte: Kadur
No P.582 dt 5.8.41
Calls for the report

To the Dt. magte Shimoga
No P.582 dt 5.8.41
Calls for the report

Yes A

NOTE—Contn. Sheet.

Serial No.

From
The Dist. Magistrate Kadur Dist
J.C 3880 dt 12.8.41
States that the suggestion to withdraw its
power to remand prisoners to police custody
from Second Class Magistrates will cause hardship
and involve extra cost and suggests that
the power may be withdrawn from certain Amildars
in the Dist, the others retaining the said power.

From
The Dist Magistrate Shimoga Dist
No J.C 10/41-42 dt 1.9.1941.

States that he is not in favour of the
proposal to withdraw the power to remand
accused persons to police custody from
all Second Class Magistrates in Shimoga
District.

41) Under the existing rules, all the Special Second Class Magistrates and all the Amildar-Magistrates including the Deputy Amildar-Magistrates have been empowered to authorise detention of accused persons to the police custody. Key F

42) The High Court have now Key A

Serial No.

the accused being required to be moved to distant places for obtaining remand and serious handicap to the progress of the investigation.

(5) Undesirable effect caused by moving undertrial prisoners for long distances ~~for~~ before they are placed before Magistrates.

(6) In the circumstances enumerated above, they are of opinion that the existing system may continue. It is stated that the desired effect would be secured if the Magistrates are warned against indiscriminate grant of remands.

(7) In view of the unanimous view expressed by the Dist Magistrates, the following points are for orders :-

(1) Whether the High Court may be informed that Govt are not in favour of the proposal to withdraw the power in question from the Second Class Magistrates

(2) Whether the attention of the Subordinate Magistrates may be drawn to the instruction

NOTE—Contn. Sheet.

WD 03987—GPB—5,000—30-8-41

Power to remand accused persons to police custody.

Cls File No. 95 of 1940. General and Revenue Secretariat

issued on the subject in Govt Memorandum dt 27. 12. 1935 and a circular issued in the matter, enjoining the Magistrates to strictly observe the rules, any lapses being observed seriously.

48) (It may be submitted that Govt Note dt 10-9-1927 empowering the Second Class Magistrates including the Amildar Magistrates to authorise the detention of accused persons to police custody was issued on the recommendations of the then Dist. Magistrates and even now, the present Dist Magistrates are not in favour of depriving the Second Class Magistrates of this power).

Submitted for orders with references.

Cpor 16/9/41

Dy) The High Court may if approved be informed of the practical difficulties in accepting the proposal withdrawing from ~~withdrawing~~ all 2nd Class Magistrates the power to remand accused persons to Police custody & the District Magistrates may be informed of all the circumstances ~~mentioned~~ leading to ~~the~~ this decision.

3:6
P

General and Revenue Secretariat | File No. | of 194 | [App. F. III—2

Serial No. (52)

Submitted with 3 drafts

29/9

~~Hon Chief Justice~~

(56) Discussed with The Chief Justice and he was pleased to say that he would forward to Government draft rules and thereafter both the circular and the rules may be issued simultaneously. The same may be awaited

Minister for Law.)

Hm 2 15.11.41.

3 15/11/41

(57) Hm 15/11

Hm 2 17.11.41.

3 17/11/41

Overseen to put up at Blue for showing it to Regr. etc

CPM 6/10

OFFICE OF THE MINISTER FOR LAW
NOV 15 1941
No 4845

NOTE—Contn. Sheet.

WD 03967—GPB—5,000—30-8-41

File No. 5 of 194 G

General and Revenue Secretariat

For

The Registrar, High Court

Roc No 767 [illegible] 18-9-194

Requests to take a rule of practice [illegible] Sec 554 Cr.P.C. and pass the [illegible] in the matter of [illegible] accused persons to be tried under Sec 167(2) of the Code of Criminal Procedure.

5) A draft of a G.O. sanctioning the proposals of the High Court is submitted herewith for approval or other orders.

5) Kind reference is invited to discussions in paras 52-57 of the notes.

(a) The G.O. may be approved.

(b) Yes for orders, if instructions noted in Para 52 above have to be carried out, even after the G.O. noted above is issued, or not.

Asst Secretary 28/12/61

~~The Registrar from the High Court~~

(c) The G.O sanctioning the proposals of the High Court may be approved.

25/12

X (Contained in the portion brackets)

SECRETARIAT GOVT OF MYSORE

Remand of accused persons to police custody 23

3402

General and Revenue Secretariat — File No. 75 of 1940. — [App. F, III—2

SECRETARIAT OFFICE
23 JAN 1942
NO 6406

E
JAN 23 1942
No 7613

G

Serial No.

in Madras and Bengal were duly considered by Govt. The instructions contained in Govt O.M. Dy 27.11.1935 appear to have been based on the rules obtaining in Bengal (Please see para 16 of the Notes in Ctn Collection 9-35-1-10 placed below).

(69) The Statements embodying the rules obtaining in Madras and Bengal are flagged "W & V" respectively.

For perusal & further orders
Law Secretary 3
20/1/42

BEGY. LAW DEPT.
664
20 JAN 1942
GOVT OF MYSORE

E

Publd Com 17/1 19.

The circular dated 27.11.35 enclosed the substance of the Rules prevailing in Bengal & the proposed rules are merely further instructions in remanding the accused to Police Custody. They are no doubt elaborate as to certain instances in which remand can and cannot be granted. However, the High Court may like to have the rules as framed by them. Perhaps, they may be approved. Rules as existing in Madras and Bengal are also put up.

W & V

Minister (in Law)
this chief Secy)

Hm 2 23.1.42.

MS 23/1/42 3 23/1/42

Mec 24/1/42

Hm 3 23/1/42
26.1.42

NOTE—Contn. Sheet.
23 JAN
GOVT OF

WD 04155—GPB—55,000—23-10-41

Remand of accused persons to police custody

File No. 75 of 1942 General and Revenue Secretariat

Serial No.

Submitted for orders as to whether the draft in the file may issue

May Issue.
(Asst Secy) 3/ 27/1

27/1

Hon 2 29.1.42

Hon 3 29/1/42

To the Registrar, High Court, the Inspr Genl of Prisons Hdr. Magts 7 DS. 17

Rc P3584-94 of 5.2.1942

Sanctions the issue of proposed Rules of Practice 13.

1925 P 940 CB 75-40. 25

Mr. Mirle N. LAKSHMINARANAPPA, B.A., LL.B.,
Government Advocate.

GOVERNMENT ADVOCATE'S CHAMBERS,
PUBLIC OFFICES,

Bangalore 19th September 1940.

D. O. No. 203

Dear Sir,

Comment was made by the High Court during the course of argument in many cases regarding the frequency of unnecessary remands to police custody and in two appeals recently decided, it was embodied in the Judgments. These remands are contrary to the spirit and letter of the Government Or No.P.4120-7/Cts 9-35-8 dated 25/27-12-1935 passed nearly five years ago.

If I can say so with great respect, strict obedience to the Government Order has not been possible as much because the Police Officers make the application as because such applications are readily granted by the Magistrates. I invited the kind attention of the Inspector-General of Police to some points in my letter to him to-day to one of which in particular I wish to invite the kind attention of the Government also.

From the file of papers which led up to the issue of the Government Order referred to above, it is clear that "Stipendary Magistrates" were alone expected to exercise this power; Vide the Under Secretary's note dated 3-12-1935 (Mr. C. Subrahmanya Aiyar's as he then was). The minute of the learned Chief Justice was also to the same effect; Vide the last sentence in para 2 of his minute found on page 21 of the file (Cts. File No.9-35/Sl. Nos.1-10) which runs as follows:-

"Then the only Magistrates who could order remands would be Stipendiary Magistrates whose proceedings could be strictly controlled".

Clause (e) of the Government Order lays down that applications should be made to First and Second Class Magistrates specially empowered. It so happens that Magistrates other than Stipendiary also have been specially empowered to grant remand

(Vide

(Vide Government Order No. P.1427/Cts.8-27-3 dated the 10th September 1927). This Order widens the circle of Magistrates to an extent greater than what was - perhaps intended. Besides improvement in the means of communication for nearly a decade and a half since the Order of 1927 was passed causes less hardship to all - concerned to go to the nearest Stipendiary Magistrate for a remand. Modification of that Order so as to restrict the power of remand only to Stipendiary Magistrates of First and Second Class may make these undesirable remands less frequent and enforce greater obedience to the - Government Order of 1935.

May I request your favour to place the matter for the kind consideration of the Government.

Yours sincerely,

Mysore Muddukrishnarao

H. V. Narayana Rao, Esq., B.A.,LL.B.,
Secretary to Government,
Law Department, BANGALORE.

b 75-40-2 29

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat.

Dated, Bangalore, 5th November 1940

No. P. 2222/Cb. 75-40-2

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore.
Law Department.

To

The Registrar,
High Court of Mysore, Bangalore.

Sir,

I am directed to invite reference to the Government orders cited in the margin in the matter of remanding accused persons to Police custody in Criminal cases and to forward herewith copy of letter dated 20th September 1940 received from the Government Advocate in Mysore suggesting that the orders on the subject may be modified so as to restrict the power of remand only to stipendiary Magistrates. Government will be glad to be favoured with the opinion of the High Court in the matter.

(1) Government Notification No.P.1427/Cts.8-27-3 dated 10th September 1927.
(2) Official Memorandum No.P.4120-7/Cts.9-35-8 dated 27th December 1935

I am in this connection to invite reference to the unofficial opinion of the High Court(the then Chief Court) No.D2.Dis.195/27-28 dated 15th August 1927 and D2.Dis.No.45/27-8 dated 1st September 1927 in the matter of empowering the Ex-officio Second Class Magistrates (Amildars and Deputy Amildars) to authorise detention of accused persons in Police custody.

I have the honour to be,
Sir,
Your most obedient servant,

For Secretary to Government,
Law Department.

mk.2

Cb. 75-40-3

2988/40

3'

R. O. C. No. 490 40-41.
~~D. Dis.~~

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,
Bangalore, 13th November 1940.

FROM

T. Shamiengar, Esq., B.A., B.L.,
~~A. Sundararaja Rao, Esq., B.A., B.L.,~~
~~S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,~~
Registrar, High Court of Mysore.

To

H.V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to Government,
Law Department,
Bangalore.

Sir,

With reference to your letter No.P.2222/Cts.75-40-2, dated 5-11-1940, inviting the opinion of the High Court regarding the Government Advocate's suggestion that the power of remand may be restricted to Stipendiary Magistrates only, I am directed to state that the question is already under consideration of the Judges and that a reply will be sent as soon as the matter is decided.

I have the honour to be,

Sir,

Your most obedient servant,

T. Shamiengar
REGISTRAR.

Submitted with reference.
If approved, the proposals of the High Court may be awaited

BCR.

CB 7-40-4 3638/40 33

R. O. C. No. 603/1941

Enc: one

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore, 11th December 1940.

FROM

T. Shamiengar, Esq., B.A., B.L.,
~~A. Subbaraya Rao, Esq., B.A.,~~
~~S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,~~
Registrar, High Court of Mysore.
Bangalore.

SECY. LAW DEPT. 13 DEC 1940 GOVT OF MYSORE

REV. SECRETARIAT 13. DEC. 1940

H.V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to Government,
Law Department,
Bangalore.

3/3/M

SIR,

With reference to Government Notification No.P.1427 Cts. 8-27-3, dated 10-9-27, empowering all Special Second Class Magistrates and all Amildars and Deputy Amildars, who are ex-officio Second Class Magistrates, to authorise the detention of accused persons in the custod of the Police, and to the Government's Official Memorandum No.P.4120-7/ Cts.9-35-8, dated 25/27th December 1935, issuing certain instructions regarding the granting of applications for remand, I am directed to enclose a copy of High Court Proceedings R.O.C.No.603/40-41, dated 11th December 1940, on the explanation of Mr. N. Seshu Iyer, now Superintende of the Mysore Jail, in regard to his orders as Amildar-Magistrate of T. Narsipur remanding to Police custody the Accused, Bailu Setty, in C.C No.98/39-40 on the file of the Special First Class Magistrate of Mysore. In the opinion of the Judges this Magistrate was obviously unfit to exercise the power to remand prisoners to the custody of the Police.

2. I am to add that it is only in rare cases that it is necessa for any proper purpose to remand an arrested person to Police custody and that in those rare cases applications may well be made to First-Class Magistrates, who are nowhere far away. Not only are Amildar-Magistrates too intimately connected with the Police to be likely always to exercise this power with due discretion; but until it is brought home to the

Police

Police that such remands are to be altogether exceptional by making them more inconvenient to obtain it appears improbable that the present Government orders on the subject will be properly observed. The instances in which they have been disregarded and which have come to the notice of the High Court have been very disappointing; and it is likely that there have been many other instances which have not come to the notice of the High Court. I am directed to recommend that the power to remand prisoners to Police custody may be withdrawn from all Second-Class Magistrates.

I have the honour to be,

Sir,

Your most obedient servant,

J. Thamiengar

REGISTRAR.

BCR.

PROCEEDINGS OF THE HIGH COURT OF MYSORE.

Read:-

High Court letter No. 250/Crl, dated 13-9-40, to the Inspector-General of Prisons in Mysore, forwarding a copy of the Judgment in Criminal Appeal No. 3 of 1940-41 on the file of the High Court and calling for the explanation of Mr. N. Seshu Iyer, Superintendent of the Mysore Jail, on the observations made by the Chief Justice in the last paragraph of the Judgment in regard to the remand orders made by the said Mr. Seshu Iyer in C.C.98/39-40 on the file of the Special First Class Magistrate, Mysore, when he was the Amildar-Magistrate of T. Narsipur Taluk; and

2. Explanation of Mr. N. Seshu Iyer, Superintendent of the Mysore Jail, received with letter No. 345-55, dated 3rd October 1940, from the Inspector-General of Prisons.

Order R.O.C. No. 603 of 40-41,

Dated, Bangalore, 11th December 1940.

In this case it has been found that the Accused murdered his wife in their house in Watalu village on the evening of 23rd September 1939. On 25th September 1939 the Police produced the Accused before

the

further remand to Police custody for 7 days, and the same Magistrate granted it. In that application it was stated that the Accused's presence was "necessary for purposes of identification and recovery". That was an untrue representation, as could easily have been ascertained and would have been ascertained by any competent Magistrate. All the witnesses for the prosecution had then been examined by the investigating officer. None of them needed to see the Accused to identify him. There was no property to be recovered. For no proper purpose could the Police then require the Accused's presence in their custody.

The explanation of the Magistrate is very unsatisfactory. He suggests that, if he had not remanded the Accused to Police custody on those occasions, the investigation would have been hampered. That is inaccurate or disingenuous. He excuses himself by saying that he had no reason to suspect that the Accused would be tortured by the Police. He appears either not to have troubled to acquaint himself with the instructions in the Government's Official Memorandum P.4120-7/Cts.3-35-3 of 25/27 December 1935 or to have disregarded both their letter and spirit. This Magistrate appears to be quite unfit withal to be entrusted with the power to remand prisoners to Police custody.

" Copy "

Sd/- T. Shamiengar,
REGISTRAR.

K.V.L.

T. Shamiengar
Registrar.

Appendix F G—1]

SUBJECT.....

.....

.....

Section Comb

File No. 75-40

Serial No. 5

Diary No. of letter replied to.....

No. P4580/Sec 2

To

General and Revenue Secretariat

( )

the *19*

The I.G. of Police in Mysore

Date of issue 8/3/41

Signed by mr. K.P.P

Sir

I am directed to forward herewith a Copy of letter No Roc 603/40-41 Dy 12.12.40. together with its enclosure from the Registrar Udipi Court of Mysore recommending the Withdrawal of powers to remand prisoners to police custody from all the Sessions

List of enclosures.....

Copied by .....

Examined by .....

an Majistrates and to Request
that Your May be
favoured with your Opinion
in the Matter

I have etc

[illegible]

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

General and Revenue Secretariat.

No. P *Dated, Bangalore,* ..7th March 1941.

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore.

Law Department.

To

The Inspector-General of Police
in Mysore, Bangalore.

Sir,

I am directed to forward herewith a copy of letter No.R.O.C.603/40-41 dated 12th December 1940 together with its enclosure from the Registrar, High Court of Mysore recommending the withdrawal of power to remand prisoners to Police Custody from all the Second Class Magistrates and to request that Government may be favoured with your opinion in the matter.

I have the honour to be,
Sir,
Yourmost obedient servant.

Secretary to Government,
Law Department.

BSN/2.

75-40-6 5726/40 A

LAW DEPT. Tele gram: POLICE phone: 2108
5 APR 1941
GOVT OF MYSORE
No. 6730//40-41

POLICE DEPARTMENT.

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,

Bangalore, dated APRIL 3, 1941.

FROM 5/4/41

E. G. B. PEEL. Esq, C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.

REV. SEC. CS - 5. APR. 1941

To

The Secretary to Government,
Law Department,
Bangalore.

Sir,

SUBJECT: Remands to Police Custody.

Sir,

In reply to your letter No.P.4580/Cts.75-40-5, dated the 8th March 1941, I have the honour to state that I agree that it is most desirable that steps should be taken to ensure that remands to police custody are granted only for adequate reasons and that Second Class Magistrates as a whole are probably not capable of exercising due discretion in this matter.

At the same time I feel that the Registrar of the High Court overstates his case when he says that First Class Magistrates "are nowhere far away". I can think of a number of places, in the Malnad in the rainy season for example, where the First Class Magistrate is really very far away.

Probably the best course would be to address District Magistrates with a view to ascertaining the places in which, owing to distance or inaccessibility, it is desirable that Second Class Magistrates should continue to exercise the power to grant remands to police custody, and for the Government to take steps to ensure that these posts are held by experienced officers who can be relied on not to abuse their powers.

I have the honour to be,
Sir,
Your most obedient servant,

Inspector-General of Police.

A5

No. P5213-21 /Cts 75-40-6(4)

To 8 & 9.4.41 (9 Districts)

The Dist Magistrate ...., Dist

G. R. S. App. F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

Sir,

I am directed to invite X reference to the Marginally noted Govt orders in the matter of remanding accused persons to police custody and to enclose herein extracts from letter No Roc 603/40-D, dt 12.12.1940 from the Registrar High Court of Mysore recommending the withdrawal of the power to remand accused persons to police custody from all Second Class Magistrates and to request that Govt may be furnished with your opinion in the matter, at an early date

X

(1) Govt Notfn No P 1627 /Cts 8-27-3 dt 10.9.1927

(2) Official Memorandum No P 4120-7/Cts 9-35-8 dt 27.12.1935.

Key A

3

In the (Upon) information

WD 0280—GPB—22,500—14-3-38

may also kindly be furnished as to whether the proposal in question will cause any inconvenience to all concerned and whether it is necessary to continue the existing arrangement of the Second Class Magistrates exercising the power to remand the accused persons to police custody only in respect of certain particular places in view of the distance involved or inaccessibility. ~~of the Station where the Second Class Magistrate is posted~~ ~~and the Station where the Second Class Magistrate is posted~~ ~~and the Station where the Second Class Magistrate is posted~~.

I have etc

for

Secretary to Govt

Home Dept

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. P 5213-21
C 5-75-40-Stat

General and Revenue Secretariat,
Dated Bangalore, 6.4.41 19

FROM

The Secretary to the Government of
His Highness the Maharaja of Mysore.
Law Department.

To

The District Magistrate,
of District

SIR,

I am directed to invite reference to the marginally noted Government Notification No. 1427/Cts.8-27-3, dated 10-9-1927. Official Memorandum No. 4120-7/Cts.9-35-8, dated 27th December 1935. Government Orders in the matter of remanding accused persons to police custody and to enclose herein extracts from letter No. H.C.C.603/40-41, dated 12th December 1940 from the Registrar High Court of Mysore recommending the withdrawal of the power to remand accused persons to police custody from all Second Class Magistrates and to request that Government may be furnished with your opinion in the matter as at an early date.

I have the honor to be,
Sir,
Your most obedient servant,

For Secretary to Government
Law Department.

Ch 75-40-7 6017/40

Immedia te.

In all future correspondence please quote this
No. J.l.C.1140/40-41.
Encls.

SECY. LAW DEPT. 21 APR. 1941 GOVT OF MYSORE FROM

OFFICE OF THE DISTRICT MAGISTRATE, KOLAR DISTRICT.

Dated Kolar, the 18th April *1941*.

3 21/41

G. Sundara Rao, Esq., B.A.,
District Magistrate,
Kolar District.

To

H.V. Narayana Rao, Esqr, B.A., LL.B.,

SECRETARY TO GOVERNMENT OF MYSORE,
Law *Department,*
Bangalore.

SIR,

Adverting to your letter No:P.5213-21/Cts.75-40-5 dated 16th April 1941 forwarding an extract of letter No:603/40-41 dated 12th December 1940 addressed to you from the Registrar, High Court of Mysore, Bangalore, recommending the withdrawal of the power to remand accused persons to Police Custody from all Second Class Magistrates and requesting me to furnish my opinion in the matter, I have the honour to state that the proposal appears to be rather drastic. In the interests of the accused themselves, it is better that all Second Class Magistrates have this power and that stricter control is exercised over remand orders.

I have the honour to be,
S i r,
Your most obedient servant,

Senior Assistant Commissioner,
For Deputy Commissioner,
Kolar District.
(Absent from Station).

MVK.

Cb 75-40-8 6134/40 P 51

DISTRICT MAGISTRATE.

OFFICE OF THE DEPUTY COMMISSIONER/AND
TUMKUR DISTRICT,

No. 9 C. 136
Enc. 40-41

Dated, Tumkur the ....24th Ap...1.....*194* 1.

FROM

The Deputy Commissioner, & District Magistrate,
Tumkur District, TUMKUR.

To

The Secretary to the Government of
His Highness the Maharaja of Mysore.
(Law Department) Bangalore.

Subject:—

SIR,

With reference to your letter No. P. 5213-21/Cts.75-40-5 dated 16th April 1941 regarding the withdrawal of the power of remanding accused persons to Police Custody from all Second Class Magistrates, I have the honour to state that the existing practice has been found convenient and suitable in places which are far away from the Special Magistrates' Courts. The production of the accused persons before the First Class Magistrates from distant taluks for obtaining a remand may cause great hardship besides involving heavy expenditure to Government. In the existing arrangement there may no doubt be instances of abuse of powers; but such have been rare and even these may be eliminated by stricter control and vigilance.

In these circumstances I am of opinion that the existing arrangement may continue.

I have the honour to be,
sir,
Your most obedient servant,

District Magistrate,
Tumkur District.

SKM/-

CR 75-40-9 6194 p 40 53

REV. F. CR 30 APR. 194 PROTECTION BRA

SECY. LAW DEPT. 29 APR. 1941 GOVT OF MYSORE

No. Jl.D.Dis. 3598/40-41.

Enc.

OFFICE OF THE DISTRICT MAGISTRATE,
MANDYA DISTRICT,

Mandya, dated, 28th April *19* 41

From

C.M.H. Ranajodha Singh, Esq., B.A.,
~~The~~ District Magistrate,
Mandya District,
MANDYA

29/4/41

To

H.V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to the Government of Mysore,
Law Department, Bangalore.

Sir,

With reference to your letter No. P.5213-21/Cts. 75-40-5 dated 16th April 1941 forwarding extract from letter No.~~R~~.O.C. 603/40-41 dated 12th December 1940 from the Registrar, High Court of Mysore, regarding the withdrawal of the power of remand accused persons to Police custody from all Second Class Magistrates and calling for my opinion in the matter, I have the honour to state that the withdrawal of the power to remand to Police custody from all Second Class Magistrates would operate as a severe handicap to the Police in the investigation of cases. There are only two special First Class Magistrates in this District and it is not always possible, to produce the accused before them where further remand is necessary without undue strain on the part of the Police and the accused. Further, there would be delay in investigation by reason of the accused being required to be moved to distant places for obtaining remand.

I, therefore, am of opinion that it is not desirable to withdraw ~~the~~ the powers from all Second Class Magistrates.

I have the honour to be,
Sir,
Your most obedient servant,

C.M.H. Ranajodha Singh

District Magistrate,
Mandya District.

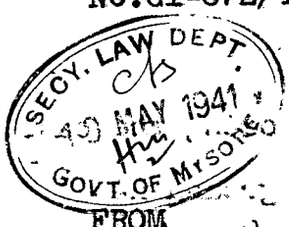
HSS.

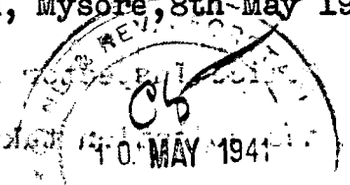
CS 75-40-10 6402/40

55

No.G1-672/40-41

Office of the District Magistrate
Mysore District,
Dated, Mysore, 8th May 1941.





FROM

K. SUBBA RAO, ESQ., B.A.,
District Magistrate, Mysore District,
Mysore.

TO

H.V. NARAYANA RAO, ESQ., B.A.,LL.B.,
Secretary to Government of Mysore,
Law Department, Bangalore.

Sir,

With reference to your letter No. P.5213-2/Cts. 75-40-5 dated the 16th April 1941 asking for my opinion regarding the proposal of the High Court to withdraw the power to remand accused persons to Police custody from all Amildars who are Ex-officio Second Class Magistrates, I have the honour to state that, if the Standing Orders on the subject printed on page 33 of the Criminal Rules of Practice and Circular Orders, Vol. I, and the instructions conveyed in the Official Memorandum No. P.4120-7/Cts. 9-35-8 dated the 25/27th December 1935 are strictly observed, the abuse of power referred to by the High Court ought to become a rarity. But, it is unfortunately true that this power is not being exercised with sufficient care and discrimination by all the Amildars. This state of affairs is due to the habit of some Amildars to treat orders in remand cases as mere routine, and not, as observed by the High Court, to the fact that Amildars being too intimately connected with the Taluk Police cannot be expected to exercise this power with impartiality. From my personal knowledge of the working of the Police Department, I can confidently say that an Amildar does not enjoy any real power in regard to matters pertaining to the Police of his Taluk. He is still the head of the Taluk Police, but, in practice, he has little control over the work of the

Police Inspector and his subordinates. That being the case, the objection taken by the High Court on this ground has little force. What is necessary is to bring home to every Amildar that if he does not exercise this power, with due discretion as laid down in the Standing Orders, his remissness in this respect will be severely noticed.

The proposal of the High Court raises many practical difficulties for the Police. Taking this District as an example, all the First Class Magistrates have their Head-quarters at Mysore except the Sub Division Officer, Nanjangud and the Special First Class Magistrate, Nanjangud. If the recommendation of the High Court is accepted, then it will be necessary for the Police to bring every arrested person within 24 hours either to Mysore or to Nanjangud for the purpose of obtaining a remand to the Police custody. A glance at the District Map shows that some of the remote villages in this District are situated at a distance of fifty miles and upwards. The Western half of the District is forest area where means of communication are meagre or non-existent. The cost to the Police Department of conveying the arrested persons from the place of arrest to the Head-quarters of the Magistrate and back will also increase considerably. In view of these practical considerations, I am of opinion that the existing practice may continue.

I have the honour to be,
Sir,
Your most obedient servant,

District Magistrate,
Mysore District.

DBR/-

57

Cs 75-40-11 6730/40

Tel. Address :—Depcom.
CHITALDRUG.

In reply, please refer to :
No J3.L.C.2662/40-41.
Enclosures :

OFFICE OF THE DEPUTY COMMISSIONER,
CHITALDRUG DISTRICT.

Dated Chitaldrug, ...26th May.....*1941*.

FROM

R. P. MALLAPPA, ESQ., B.A., LL.B.,
Deputy Commissioner, & Dist. Magistrate,
Chitaldrug District,
CHITALDRUG.

To

H.V.NARAYANA RAO, ESQ., B.A., LL.B.,
Secretary to Government of Mysore,
.....Law..... *Department,*
BANGALORE.

GEN. & REV. 21 L. L.S.G.

SIR,

SUBJECT :—

With reference to your letter No.P.5213-21/Cts.75-40-5 dated 16-4-41 requesting to furnish my opinion on the recommendations of the High Court to withdraw the power of remanding accused persons to Police custody from all the Second Class Magistrates, I have the honor to state that the instructions contained in Criminal Rules of Practice Vol.I - Pages 32 & 33 - and in G.O.No.P.4220-7/Cts.9-35-8 dated 27-12-35 are clear on the point and that the divesting of power of remand to Police custody from the Second Class Magistrates would involve unnecessary expenditure to Government under T.A. as the accused had to be brought from long distances to the places where there are First Class Magistrates. It would also be difficult to march the accused from long distances, which might result in delay. The existing practice may be continued provided the Second Class Magistrates are instructed to observe the rules carefully and strictly and grant remands to Police custody where there are proper grounds and if closer scrutiny is exercised by the District Magistrates, I do not think the rules framed

This is a point for the emphasis
17/9

framed after due consideration and conditions prevailing in Mysore, call for any change at present.

I have the honour to be,
Sir,
Your most obedient servant,

District Magistrate,
Chitaldrug District.

JBR.

7207 Jud 59

Office of the District Magistrate,
Hassan District,
Dated Hassan, the 11th June 1941.

No: H.Dis.T, 65/40-41.

Cs 75-40-12

T. Ramaiya, Esq., B.A., (Hons)

District Magistrate, Hassan District.

To

16/6/41

H.V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to Government, Law Department,
B a n g a l o r e.

Sir,

Adverting to your letter No:P.5213-21/Cts.75-40-5 dated 16th April 1941 forwarding an extract from letter No:603/40-41 dated 12th December 1940 from the Registrar, High Court of Mysore, Bangalore, addressed to you re: the withdrawal of the power to remand accused persons to Police custody from all Second Class Magistrates and calling for opinion thereon I have the honor to state that much inconvenience will be felt both by the Police and the arrested persons, if orders remanding an accused person to Police custody are required to be passed only by First Class Magistrates. So far as this District is concerned, the two Sub Division Officers who are Ex-officio I Class Magistrates are touring officers and as such all accused persons, wherever arrested in the District, will have to be brought to Hassan for purposes of remand, and placed either before the Special I Class Magistrate or before the Treasury Assistant Commissioner Magistrate. It does not at the same time appear to be either desireable or safe to move undertrial prisoners for long distances, before they are placed before the proper Magistrates. I am to add that it also involves heavy expenditure to Government as the Police will have to take the arrested persons from any corner of the District to the headquarters of the District where there is the certainty of getting at Magistrates of I Class, not to speak of the fact that such a course will hinder the speedy investigation of the cases in many instances.

I am therefore of opinion that the power of remanding accused persons in Criminal Cases now vested on the Second Class Magistrates should not

should not be withdrawn and that the instructions issued in Official Memorandum No.P.4180-7/Cts. 8-35-8 dated 27th December 1935 be ordered to be strictly followed.

I have the honor to be,
Sir,
Your most obedient servant,

District Magistrate,
Hassan District.

as.

61

18.0.41

OFFICE OF THE DISTRICT MAGISTRATE,
BANGALORE DISTRICT.

In all future communications please quote
No. J1-2102/40-41.
Enc.

Dated Bangalore, the 8th July 1941.

Tel. Address.—"DEPCOM"
Post Box No. 34.

SECY. LAW DEPT. 9 JULY 1941 GOVT OF MYSORE

9/7/41

CS. 9. JUL. 1941

CS 7.5-40-13

From

M. Seshadri, Esq., M.A.,
District Magistrate,
Bangalore District.

To

H. V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to the Government of Mysore,
Law Department, Bangalore.

SIR,

Subject:— WITHDRAWAL OF POWERS TO REMAND ACCUSED TO POLICE CUSTODY FROM THE SECOND CLASS -- MAGISTRATES.

With reference to your letter No.P.5213-21/Cts. 75-40-5 dated 16th April 1941, on the above subject, I have the honour to state that it is only in cases where retention in Police custody is necessary for the investigation of a case that the Police apply for a remand to Police custody. The High Court suggest that the power of remanding persons - accused to Police custody should be taken away from the Second Class -- Magistrates. If this suggestion is accepted, the Police will invariably have to go to a Magistrate of the First Class to obtain remand for accused persons. First Class Magistrates are generally stationed at the head-quarters of the District and the Revenue Sub Division. In this District First Class Magistrates are stationed only at Bangalore, Closepet and Dodballapur. At other Taluk headquarters the only stipendiary Magistrate available is the Amildar and the Ex-Officio Second Class Magistrate. If the power of remanding accused persons to Police custody is to be taken away from the Amildars, the Police Officers and the accused persons will have to travel long distances to the Courts of First Class Magistrates for purposes of remand. It seems to me that this will seriously hamper the progress of the investigation of cases by the Police.

2. In these circumstances, I venture to think that the present --

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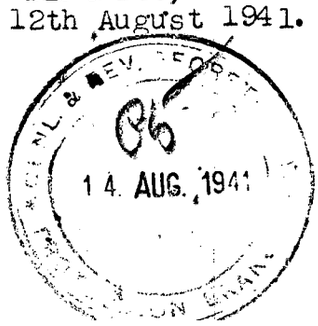
No.J1-C.3880/40-41. Office of the District Magistrate,
Kadur District,
Chickmagalur, dated, the 12th August 1941.



From

C. E. Noronha, Esquire., M.A.,

District Magistrate,
Kadur District.

To

H.V. Narayana Rao, Esquire., B.A., LL.B.,

Secretary to Government, Cb 75-40-14
Law Department,
Bangalore.

Sir,

Subject:- Withdrawal of the power to remand accused persons to Police custody from all Second Class Magistrates.

Adverting to your letter No.P.5213-21/ Cts.75-40-5 dated 16th April 1941 requesting me to furnish my opinion on the above subject, I have the honour to state as follows:-

It is stated in the extract of the High Court letter No.603/40-41 dated 12-12-1940 that it is very unlikely that the Amildar-Magistrates (who are Ex-Officio II Class Magistrates), being too intimately connected with the Police, will exercise this power to remand accused persons, with due discretion; and that it should be brought home to the Police that such remands should be altogether exceptional by making them more inconveinent to obtain. Hence it is suggested that the power to remand prisoners to police custody should be withdrawn from all Second Class Magistrates and that the application to remand an arrested person should be made to the First Class Magistrates only in rare cases.

In this connection, I beg to bring to your kind notice the practical difficultires in the way so far as this District is concerned. There are only two First Class Courts in this District. Excluding Chickmagalur Town, there is only one Ex-Officio First Class Magistrate's Court at Tarikere and another at Sringeri.

For cases arising in the Chickmagalur Taluk, the Special First Class Magistrate or any two of the Ex-Officio

any of the two ofthe Ex-Officio I Class Magistrates (Sub Division Officer- Chickmagalur and District Treasury Officer Chickmagalur) might conveniently be approached. The Ex-Officio I Class Magistrate of Tarikere Sub Division is a touring Officer and he will not be available at all times to the Police for the purpose of obtaining remands. The nearest First Class Magistrate to Tarikere in the absence of the Sub Division Officer- Tarikere will be the First Class Magistrate Narasimharajapura. There is only one train to Narasimharajapura which leaves Tarikere in the morning and returns in the evening. In regard to the other places viz., Koppa, Mudigere and Kadur, the nearest First Class Magistrate to Koppa is the Ex-Officio I Class Magistrate of the Sringeri Jahagir and to Mudigere and Kadur either the Magistrate at N.R.Pura or those at Chickmagalur. If the Police of these places have therefore to approach only a First Class Magistrate for remands, much time will be wasted in travelling to and fro and also much amount spent in travelling allowances.

In the circumstances, I am of opinion that the power to remand prisoners to Police custody may be conveniently withdrawn from the Amildar-Magistrates of the Chickmagalur and Tarikere Taluks and the Deputy Amildar-Magistrates of Narasimharajapura and Sringeri. Such power may, however, continue to remain with the the Munsiff II Class Magistrate's of Tarikere and the Amildars, and Ex-Officio II Class Magistrates of the Kadur, Koppa and Mudigere Taluks.

Affairs co the line along which the question may be more tackled Mr 17/9

I have the honour to be
Sir,
Your most obedient servant,

Assistant Commissioner
For District Magistrate,
Kadur District.
Absent on Tour.

H.P.R.

65

1326/41

No. J1.C.10/41-42.
Enc.

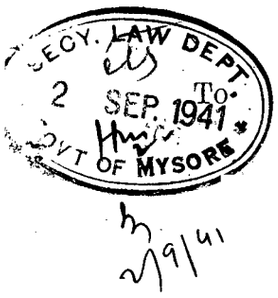
OFFICE OF THE DEPUTY COMMISSIONER,
SHIMOGA DISTRICT.

Dated Shimoga, the 1st September 1941

Cls 75-40-15

FROM

M. Navaneetham Naidu, Esq., B.A., B.L.,
Deputy Commissioner, Shimoga District.



TO.

H. V. Narayana Rao, Esq., B.A., LL.B.,
Secretary to the Government of His Highness the Maharaja of Mysore,
Law *Department, BANGALORE.*

Subject:— Withdrawal of power to remand accused persons to Police custody from all Second Class Magistrates.

SIR,

With reference to your letter No.P.5213-21/Cts 75-40-5 dated 16-4-1941 calling for my opinion on the above subject, I have the honour to state that if the power to remand accused persons to Police custody is withdrawn from all Second Class Magistrates it will be very difficult for the Police to take remand in time in this District. For instance if a person is arrested at Agumbe (Thirthahalli Taluk) the police have to bring the accused person all the way from Agumbe to Shimoga a distance of 58 miles merely for the purpose of remand. This will cause great inconvenience to police and will also involve cost to Government in the shape of T.A. to escorting police constables as well as the bus fare to the accused. Further during rainy reason in the interior part of the Malnad District, it would be very difficult to take the accused person from place to place to get at a First Class Magistrate for taking remand. There are occasions when the river Dandavathi between Jade and Anavatti will be in full floods and it will be impossible to reach Sagar in time to obtain remand.

In view of the inconvenience and of the extra cost to Government that would be involved, I am of opinion that the powers to remand accused to police custody from Second Class Magistrates may not be withdrawn in this District, and that the

Second

Second Class Magistrates may be strictly instructed not to grant remand to police custody unless there are exceptional good reasons on circumstances, the ordinary course being to remand accused to Magisterial custody.

I have the honour to be,
Sir,
Your most obedient servant,

District Magistrate,
Shimoga District.

67

3402/41

R. O. C. No. 767
D. Dis. 4m+42

Encl: one

HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

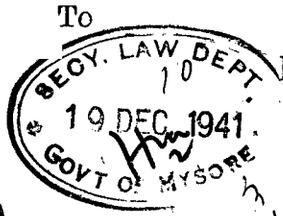
Bangalore, 16th December *194* 1

19/12

FROM

T. SHAMIENGAR, ESQ., B.A., B.L.,
Registrar, High Court of Mysore.

To



H. V. Narayana Rao, Esq., B.A.,LL.B.,
Secretary to Government,
Law Department,
B a n g a l o r e.

Cs- 75-40-16

SIR,

22/12

In Official Memorandum P.4120-7/Cts. 9-35-8, dated 25 December 1935, the Government issued instructions for the guidance of Magistrates in remanding arrested persons to Police custody under Section 167(2) of the Code of Criminal Procedure and directed that such remands should be ordered only in really exceptional circumstances. Unfortunately in recent years a number of instances have come to the notice of the High Court, in which those instructions have been disregarded and Magistrates have acquiesced in applications for remands to Police custody, which were unjustified and were made in circumstances raising grave suspicion that they were obtained for improper purposes. When explanations have been called for by the High Court, it has been clear in several instances that Magistrates have not appreciated their responsibility in the matter; and in some instances it has been suggested that they were not aware of the Government's instructions issued in 1935. There is no real excuse for District Magistrates failing to insist that Magistrates subordinate to them obey the Government's orders; but it is possible that some Magistrates appointed in recent years, not

finding any specific orders on the subject in the volumes of Criminal Rules of Practice and Circular Orders and not acquainting themselves with the files of Government Orders in their offices, may remain unaware of the instructions of 1935. In the opinion of the Judges of the High Court it is desirable that no possible excuse for such ignorance should remain. As the Government have clearly indicated, it is of very great importance both for the safety of His Highness' subjects and for the credit of the administration that mediaeval methods of investigation by putting pressure on accused persons to give information should be prevented and that Magistrates should guard accused persons against such methods instead of giving opportunities for their exercise. After consideration the Judges now propose to make a rule of practice under Section 554 of the Code of Criminal Procedure in the terms appended to this letter, and I am directed to request that the rule may be sanctioned by the Government. When the rule has been made and included in the Criminal Rules of Practice, no Magistrate will be able to plead ignorance of it.

Opportunity has been taken to make clear at the same time that a Magistrate, who remands an accused person to any custody except for the purpose that he may be produced before another Magistrate or Court, must make sure that the accused person, unless he is previously

released on bail or otherwise by the Magistrate himself or by some superior authority, is produced again before the Magistrate at the end of the period of remand. It might perhaps be thought that such instructions are unnecessary, as obviously a Magistrate, who takes upon himself the grave responsibility of ordering the remand of an accused person, is responsible also for seeing that the period of remand is not exceeded and that during it no harm has come to the remanded person. But it came to light in a recent case that an inexperienced Magistrate remanded an accused person to Police custody for a week and never troubled to inquire what had become of him under the impression that his own responsibility was at an end with ordering the remand: the Police never produced the remanded person again before any authority but after several days let him go in most suspicious circumstances: the story of the accused person, which was supported by injuries on his body, was that the Police tortured him in order to extort a confession before they let him go: as the Police did not produce the accused person before any authority there was some doubt whether the injuries were received by him while in Police custody, a doubt which could not have arisen if the Magistrate, as he should have done, had required the accused person to be produced again before him.

It is possible that the Government may think it necessary to issue further instructions to the Police regarding applications for remands to Police custody. But that is not a matter which can properly be the subject of a rule of practice made by the High Court.

I have the honor to be,

Sir,

Your most obedient servant,

D.R. Cochrane 18/12/41

for REGISTRAR (on casual leave)

ex.
NVK/

Cls 12 Copies 71

G. R. S. App. F VI—G 2]

SUBJECT .....

.....

.....

Diary No. of letter replied to .....

Section Cls

File No. 78-400

Serial No. 5/17

General and Revenue Secretariat

( )

the *194*

Proceedings of the Government of His Highness the Maharaja of Mysore.

Date of issue 5-2-1942.

Read—

Signed by Mr. K. P. P.

(1) Official Memorandum No P 4120-7/Cls 9-35-8 Dt 27-12-1935 issuing instructions for the guidance of Magistrates in the matter of demanding arrested persons to police custody under Section 167 (2) of the Code of Criminal procedure

May this be—

(i) printed ?

(ii) treated as a standing order ?

(iii) published in the Gazette, English Part ?

(iv) translated ?

(v) placed at the disposal of the press ?

(vi) published in the Gazette, Kannada Part ?

Order ~~thereon No.~~

(2) Correspondence ending with letter No Roc 767/41-42 Dt 18-12-1941 from the Registrar Hgh Court of Mysore stating that in recent years a number

of instances have come to the notice of the High Court in which the instructions issued by Govt in O. M. Dy 27-12-1935 read above have been disregarded with the result that remands in many cases to police custody have been granted unnecessarily and with a ~~view to~~ view to prevent the recurrence of such instances in future the High Court propose to make a rule of practice under Section 554 of the Code of Criminal procedure in the terms appended to this order and requesting sanction thereto.

order P3584-94 Dy 5-12-42

Sanctioned

26-12-42
Secretary to Govt
Law Dept

List of Enclosures

Copied by

Examined by

To
(1) The Registrar High Court Appellate
(2) The I.G. of Police
(3) The DMs of Districts

WD 087—GPB—40,000—14-11-40

Proposed rule of practice 9

12 copies

When an accused person is brought before a Magistrate in custody under Section 167 (1) of the Code of Criminal Procedure, if it is necessary to keep him in custody, ordinarily the proper place of detention is a magisterial lock-up or jail. The power of remanding an accused person to Police custody under Section 167 (2) should be used very sparingly and only in exceptional circumstances, when there are special reasons why it is not enough to keep the accused person in a magisterial lock-up or jail -- for instance when the accused person has already offered to point out some thing or unknown person at a place, to which it has not been possible to take him during the 24 hours mentioned in Section 167 (1), or when he has to be taken for identification by some sick person at such a place. In such instances the Magistrate before ordering the remand to Police custody should ascertain from the accused person that he has offered to point out the thing or person or, as the case may be, should satisfy himself that there is a sick witness, who cannot be taken to the neighbourhood of a magisterial lock-up or jail to identify the accused person.

An

An accused person must never be remanded to Police custody on the chance that he may give information, which he has not already offered to give, or in order that he may be taken about by the Police on the chance that someone may identify him.

2. No Magistrate should remand an accused person to Police custody unless some such exceptional reason is specified in a written application for remand made to him by the Police officer concerned nor without questioning the accused person and satisfying himself that the reason is a genuine one; and in his order of remand the Magistrate must specify what exceptional reason he finds for the remand. Vague expressions such as "for the recovery of property" or "for the completion of the investigation" should never be accepted by the Magistrate nor used by him. When a remand to Police custody is ordered by a Magistrate, the period of the remand should never be longer than required for the special purpose, which the Magistrate finds to justify it.

3. Every Magistrate who remands an accused person or under trial

risoner

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PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

Read :–

(1) Official Memorandum No.P.4120-7/Cts.9-35-8 dated 27th December 1935 issuing instructions for the guidance of Magistrates in the matter of remanding arrested persons to police custody under Section 167 (2) of the Code of Criminal Procedure.

(2) Correspondence ending with letter No.Roc. 767/41-42 dated 18th December 1941 from the Registrar, High Court of Mysore stating that in recent years a number of instances have come to the notice of the High Court in which the instructions issued by Government in Official Memorandum dated 27th December 1935 read above have been disregarded with the result that remands in many cases to police custody have been granted unnecessarily and with a view to prevent the recurrence of such instances in future the High Court proposed to make a rule of practice under Section 554 of the Code of Criminal Procedure in the terms appended to this order and requesting sanction thereto.

O r d e r No. P3584-96 (48-75240-1)

Dated, Bangalore, 8 February ~~January~~ 1942.

S a n c t i o n e d.

L. A. Boswell

for Secretary to Government,
Law Department.

To

The Registrar, High Court of Mysore.
The Inspector General of Police in Mysore.
The District Magistrates of Districts.

Rule of practice

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3. Every Magistrate, who remands an accused person or under trial prisoner to custody of any kind, must recognize that, unless the remand is for production before another Magistrate or Court, it is his duty to assure himself at the end of the period of remand that no harm has come to the accused person or prisoner while under remand. In his order of remand, unless the remand is for production before another Magistrate or Court, the Magistrate should state explicitly that the accused person or prisoner is to be produced before him at the expiry of the period of remand; and, when the accused person or prisoner is so produced, the Magistrate must satisfy himself by observation and, if necessary, by questioning that no harm has come to him.

for Secretary to Govt
Law Dept